

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLARITY SPORTS
INTERNATIONAL, LLC,

Plaintiff/Petitioner,

No. 20-51484

v.

District Judge George Caram Steeh
Magistrate Judge R. Steven Whalen

REDLAND SPORTS, ET AL.,

Defendants,

v.

KENNETH GOLLADAY,

Respondent.

_____/

ORDER GRANTING RENEWED MOTION TO ENFORCE SUBPOENA

On January 22, 2021, I entered an order granting Plaintiff-Petitioner Clarity Sports International, LLC's ("Clarity's") motion to alternative service of a Rule 45 subpoena on non-party Kenny Golladay, regarding an action brought in the Middle District of Pennsylvania, *Clarity Sports International, LLC v. Redland Sports, Et Al.*, M.D. Pa. No. 19-cv-305-YK. Specifically, I held that Clarity could serve the subpoena on Mr. Golladay at two email addresses identified as being used by Mr. Golladay to communicate with Clarity (his former agents) and with one of the Defendants. *See Order*, ECF No. 6, PageID,298-300. Before the Court is Clarity's motion to enforce the subpoena that it

served via those email addresses [ECF No. 7].

Appended to the present motion as Exhibit 1 is a proof of service showing that on January 22, 2021, the subpoena, Notice of Subpoena, and a copy of this Court's order, along with a cover letter, was served on Mr. Golladay's email, as ordered [ECF No. 7-1, PageID.322-335]. Exhibit 2 contains two additional emails to Mr. Golladay, the first one a January 27, 2021 email with a deposition notice attached, and the second a Zoom link for his videoconferenced deposition for February 5, 2021, at 10:00 a.m. *Id.*, PageID.426-427.

Mr. Golladay did not appear for his deposition or produce the documents. Clarity's Exhibit 3 is the transcript of Clarity's counsel's statement on the record at 10:15 a.m. on February 5, 2021. Also present were counsel for Defendants MVP Authentics, LLC, Daryl Eisenhour, Jason Smith, Boone Enterprises, d/b/a Boone Enterprises Authentic Autographs and Craig Boone; and counsel for Defendants Redland Sports and Gerry Ochs. Clarity's counsel stated:

"The attorneys for all parties are convened on a video conference for the deposition of Kenny Golladay. Mr. Golladay was served with a subpoena and a Notice of Deposition. I've emailed those materials to him and I've copied counsel for all parties on all of my emails to Mr. Golladay.. Mr. Golladay has not responded to any of my emails. The appointed time for the deposition was 9:00 a.m. Central time. So we're now over 15 minutes past the appointed time and Mr. Golladay has not responded to any of the emails I've sent to him, including an email where I said, "Can you please let us know if you're going to attend?" ECF No. 7-3, PageID.431.

Clarity now seeks an order from this Court compelling Mr. Golladay to appear for a deposition in response to the subpoena that was served on him by email.

The subpoena and notice of deposition were served on Mr. Golladay consistent with the terms of the previous order granting alternative service by way of email. Yet, Mr. Golladay did not produce the requested documents and did not appear for his video deposition. Nor did he file an objection to the subpoena, F.R.Civ.P. 45(d)(2)(B), or move to quash the subpoena, F.R.Civ.P. 45(d)(3). Rule 45(g) provides that the Court “may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

IT IS THEREFORE ORDERED that Clarity’s motion to enforce subpoena [ECF No. 7] is GRANTED.

IT IS FURTHER ORDER that Clarity will serve Mr. Golladay with a new Notice of Deposition, with a new date and Zoom link, and that Mr. Golladay will appear as directed. The new date will be no sooner than 14 days from the date of this Order.

IT IS FURTHER ORDERED that Mr. Golladay will produce documents as set forth in the subpoena.

IT IS FURTHER ORDERED that Clarity will also serve Mr. Golladay with a copy of this Order.

MR. GOLLADAY'S FAILURE TO COMPLY WITH THIS ORDER MAY
RESULT IN SANCTIONS FOR CONTEMPT OF COURT.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: March 19, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on March 19, 2021, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen